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US ARMY CORPS OF ENGINEERS
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**CENAO-WRR STATE PROGRAMMATIC GENERAL PERMIT (SPGP)
Piers, Aquaculture, Shoreline, Dredging, Other (PASDO)
23-SPGP-PASDO**

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CENAO-WRR STATE PROGRAMMATIC GENERAL PERMIT (SPGP)
Piers, Aquaculture, Shoreline, Dredging, Other (PASDO)
23-SPGP-PASDO

Effective Date: September 5, 2023

Expiration Date: September 4, 2028

I. AUTHORITIES:

- A. Section 10 of the Rivers and Harbors Act of 1899 (33 United States Code [U.S.C.] 401 and 403)
- B. Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344).
- C. 23-SPGP-PASDO authorizes, by the Secretary of the Army and the Chief of Engineers, under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and under Section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344), certain pier, aquaculture, shoreline, dredging, and other activities in tidal or non-tidal waters of the United States (WOTUS), including wetlands, within the geographical limits of the Commonwealth of Virginia and under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Norfolk District (Corps or Norfolk District). The Corps' authority to develop general permits is contained in Section 404(e) of the Clean Water Act ("CWA") (33 U.S.C. § 1344) and Department of the Army (DA) regulations (33 C.F.R. § 325.2(e)(2), 322.2(f), and 323.2(h)).

II. SCOPE OF ACTIVITIES:

A. Authorized Activities:

- 1. Piers and Other Structures:
 - a. Open pile piers and other structures
 - b. Mooring structures/buoys, pilings, aids to navigation, fender piles, osprey poles
- 2. Aquaculture / Mariculture:
 - a. Commercial
 - b. Non-commercial
- 3. Shoreline Stabilization:
 - a. Living shorelines
 - b. Breakwaters and associated fill material
 - c. Bulkheads, revetments, and associated backfill and/or excavation
 - d. Groins, jetties, spurs, baffles, and associated fill material

4. Dredging:
 - a. Maintenance dredging for previously authorized projects (including federal channel projects)
 - b. New dredging
 - c. Discharge of dredged material
5. Other:
 - a. Boat ramps and accessory structures
 - b. Informative signs

B. Eligibility Criteria:

1. The use of 23-SPGP-PASDO is restricted to those projects that have avoided and minimized impacts to WOTUS, including wetlands, to the maximum extent practicable.
2. 23-SPGP-PASDO projects must have no more than minimal individual and cumulative impacts and must meet all the terms and conditions outlined herein.
3. The discharge must not cause the loss of greater than 1/2 acre of WOTUS (e.g., wetlands, open water, and stream channel). Stream channel loss must be reported in acres and linear feet.
4. For ecosystem restoration projects (e.g., living shorelines), the placement of sandy fill material within WOTUS cannot exceed one (1) acre and the project must result in no net loss of vegetated wetlands.
5. The total amount of vegetated wetlands which may be filled, graded, or excavated, in square feet may not exceed the length of the activity along the shoreline in linear feet unless the district engineer waives this criterion by making a written determination concluding that the project will result in minimal adverse effects.
6. New dredging will not exceed a surface area of two (2) acres. No dredging of Submerged Aquatic Vegetation (SAV) or coral reefs is authorized. Dredging of cobble habitat, intertidal mudflats, wetlands, or shellfish beds must be avoided unless waived by the district engineer; and if waived, the cumulative impacts to these resources cannot exceed 1/10 acre and must include an ecological restoration plan that will result in no net loss of these resources.
7. Activities are subject to Corps regulations.
8. Activities meet the general and special conditions of 23-SPGP-PASDO listed in this document, and any special conditions required of each project-specific verification.

9. All required compensatory mitigation follows the Mitigation Rule [Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources, dated April 10, 2008, 33 CFR 325 and 332/40 CFR 230].
10. All applicable federal reviews, listed in the general conditions of this document, have been completed.
11. All required state and local approvals have been received.

C. Review Categories:

1. **Category A:** Written verification from the Corps is not required before proceeding with the proposed work. The two activities that are authorized under Category A are:
 - a. Private pier structures that meet the criteria on the 23-SPGP-PASDO Self-Verification Form: If the criteria are met and the signed form is included with the JPA, the project is authorized by the 23-SPGP-PASDO and no further authorization will be required from the Corps. Link to 23-SPGP-PASDO Self-Verification Form:
<https://www.nao.usace.army.mil/Missions/Regulatory/RBregional.aspx>
 - b. Noncommercial riparian shellfish aquaculture structures: The structures must not exceed 160 square feet, the activity is strictly noncommercial, the structures will not adversely impact navigation or SAV, and the permittee has obtained a Virginia Marine Resources Commission (VMRC) General Permit (GP) #3. If the above criteria are met, the project is authorized by the 23-SPGP-PASDO and no further authorization will be required from the Corps. Link to VMRC GP3 abbreviated application:
https://mrc.virginia.gov/forms/2019/VGP3_Aquaculture_form_2019.pdf
2. **Category B:** A written verification from the Corps is required before proceeding with the proposed work. Activities that fall within VMRC, Virginia Department of Environmental Quality (VDEQ), and/or Local Wetland Board (LWB) jurisdiction and will also be reviewed by those agencies for compliance with Virginia code and regulation.
3. **Category C:** A written verification from the Corps is required before proceeding with the proposed work. Activities that do not fall within VMRC, VDEQ, and/or LWB jurisdiction and will be reviewed by the Corps only.

D. Review Criteria:

1. Under both Categories B and C, the Corps will complete a federal review and will provide the applicant with written verification once it has determined that the project meets the criteria of the 23-SPGP-PASDO.
2. In an effort to improve efficiencies and avoid duplication of review, the Corps will consider the VMRC, VDEQ, and/or LWB efforts to ensure the project avoids, minimizes, and mitigates impacts for projects under Category B. However, the Corps maintains the right to require additional compensatory mitigation on a case-by-case basis. In general terms, the objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to WOTUS authorized by DA permits.
3. Work that does not meet one or more of the terms or general conditions of 23-SPGP-PASDO, including work that has been determined to be more than minimal in nature (at any impact level), will require consideration under a different type of Corps permit.
4. The permittee is required to submit a new 23-SPGP-PASDO permit application when a permit verification has been issued AND changes have been made to the project, including but not limited to: changes to the purpose, impact totals, impact type, jurisdiction, and proposed compensation.

III. **PROCEDURES:**

A. **APPLICATION:** The following information must be submitted as part of a 23-SPGP-PASDO permit application:

1. A completed and signed Joint Permit Application (JPA). The applicant must utilize the most recent version, which is located on the Norfolk District Regulatory website.
<https://www.nao.usace.army.mil/Missions/Regulatory/JPA/>
2. A JPA that is clearly marked 23-SPGP-PASDO.
3. Non-commercial shellfish aquaculture projects that are eligible for authorization under the VMRC GP #3 may use the abbreviated JPA, which can be accessed on the VMRC website.
https://mrc.virginia.gov/forms/2019/VGP3_Aquaculture_form_2019.pdf
4. A compensatory mitigation plan for all projects where the permanent loss exceeds 0.10 acre of wetlands, and/or 0.03 acre of stream bed, or 300 linear feet of stream bed. *Stream channel loss must be reported in acres and linear feet.*

B. **PROCESSING:**

1. The VMRC will send the application link to the Corps for federal review and processing.

2. The Corps, VMRC, VDEQ, and LWB will review the application concurrently.
3. The VMRC, VDEQ, and/or LWB are the agencies responsible for ensuring that the permit application is in compliance with Virginia code and regulations.
4. The Corps is the agency responsible for the federal review, and for ensuring that the permit application is complete and meets the informational and technical requirements for a 23-SPGP-PASDO verification.

C. STATE APPROVALS:

For projects that fall within VMRC, VDEQ, and/or LWB jurisdiction, permittees must also obtain authorization from the VMRC, VDEQ, and/or a LWB by permit, rule, or regulation prior to commencing work in WOTUS.

When required, permittees must also obtain a VDEQ permit prior to commencing work in WOTUS, which includes all state surface waters not solely under the jurisdiction of the federal government (e.g., surface waters on certain military bases within the borders of Virginia). Nothing in this certification relieves the applicant or receiver of a 23-SPGP-PASDO verification from complying with the Commonwealth of Virginia laws and regulations applicable to the activities being authorized under the 23-SPGP-PASDO.

IV. DEFINITIONS:

- A. Loss: WOTUS that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of WOTUS is a threshold measurement of the impact to jurisdictional waters, including wetlands, for determining whether a project may qualify for a 23-SPGP-PASDO; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. WOTUS temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of WOTUS. Impacts resulting from activities that do not require Corps authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of WOTUS.
- B. Permittee: The responsible party in receipt of the 23-SPGP-PASDO verification. The permittee will be the responsible party for complying with all 23-SPGP-PASDO general conditions and any additional special conditions required for each single and complete project.

V. ACTIVITY SPECIFIC CRITERIA:

General Criteria

1. This SPGP does not authorize any work that does not meet all terms and conditions set out herein. All work undertaken that does not strictly comply with the terms and conditions will require separate Department of the Army authorization.
2. By accepting this SPGP, the permittee agrees with all the terms and conditions of this permit, including the limits of Federal liability contained herein. The permittee acknowledges that the structures permitted herein may be exposed to waves caused by passing vessels and that the permittee is solely responsible for the integrity of the structures permitted herein and the exposure of such structures and vessels moored to such structures to damage from waves. The permittee agrees that the United States is not liable in any way for such damage and that he/she shall not seek to involve the United States in any actions or claims regarding such damage.
3. The discharge must not cause the loss of greater than 1/2 acre of WOTUS (e.g., wetlands, open water, and stream channel). Stream channel loss must be reported in acres and linear feet.
4. For ecosystem restoration projects (e.g., living shorelines), the placement of sandy fill material within WOTUS cannot exceed one (1) acre and the project must result in no net loss of vegetated wetlands.
5. The total amount of vegetated wetlands which may be filled, graded, or excavated, in square feet may not exceed the length of the activity along the shoreline in linear feet unless the district engineer waives this criterion by making a written determination concluding that the project will result in minimal adverse effects.
6. New dredging will not exceed a surface area of two (2) acres. No dredging of SAV or coral reefs is authorized. Dredging of cobble habitat, intertidal mudflats, wetlands, or shellfish beds must be avoided unless waived by the district engineer; and if waived, the cumulative impacts to these resources cannot exceed 1/10 acre and must include an ecological restoration plan that will result in no net loss of these resources.
7. The grain size of the source material used for fill must be quality beach sand that is the same size or larger than that of the native beach material and suitable for the proposed project. In most cases, sand material with no more than 10% passing a #100 sieve will be appropriate. All material will

be obtained from either an upland source, a borrow pit, or dredge material approved by the Corps.

8. Projects which include placement of sandy fill material may result in creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and the permittee seeks to either add to or replenish the area previously filled, the Corps will consult with the U.S. Fish and Wildlife Service (USFWS) pursuant to Section 7 of the Endangered Species Act (ESA) to ensure work is not likely to adversely affect proposed or listed species or proposed or designated critical habitat. Specific requirements on the type of sand allowed for beach and dune work may be required.
9. Projects that result in restoration/enhancement of native vegetation or oyster reefs, may require monitoring at the end of the first full growing season following installation and after the second year of establishment. The monitoring should be undertaken between June and September of each year and should include at a minimum: The project location, the Corps project number, representative photos of the site, and a brief statement on the success of the project.
10. As the design of a living shoreline project is site specific, we suggest that you refer to the Virginia Institute of Marine Sciences (VIMS) Living Shoreline Design Guidelines for Shore Protection in Virginia's Estuarine Environments and other reference documents, which can be found at: <http://ccrm.vims.edu/livingshorelines/agencies/index.html>
11. For impact pile installation: In compliance with the ESA and the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), a ramp-up will be required for the impact hammer operations. The ramp-up operations will involve starting with an initial set of three strikes from the impact hammer at 40% energy, followed by a 30 second waiting period, then two subsequent three- strike sets. During ramp-up, the contractor will monitor the project area and if sea turtles, sturgeon, or marine mammals are sighted within the project area, he/she will implement a shutdown.
12. For vibratory pile installation: In compliance with the ESA and the MSFCMA, a ramp-up will be required for the vibratory hammer operations. Pile driving will be initiated for 15 seconds at reduced energy followed by a one-minute waiting period. This sequence of 15 seconds of reduced energy driving and one-minute waiting period will be repeated two additional times, followed immediately by pile-driving at full rate and energy.

Piers and Other Structures

1. Proposed structures that extend greater than one-fourth of the distance across the waterway measured from either mean high water to mean high water (including channelward wetlands) or ordinary high water to ordinary high water (including all channelward wetlands) may be authorized under this SPGP if:
 - a. The prospective permittee provides written justification/need for the encroachment (e.g., to reach the deeper water within the waterway for navigational purposes); and
 - b. The Corps determines that the proposed activity does not individually or cumulatively adversely affect general navigation and/or the aquatic environment.
2. Proposed structures crossing wetland vegetation that are more than five (5) feet in width and/or have fewer than four (4) feet between the decking and the vegetated wetlands substrate may be authorized under this SPGP if:
 - a. The prospective permittee provides written justification/need for the increased width of the structure and/or decreased height between the decking and the vegetated wetlands substrate; and
 - b. The Corps determines that the proposed activity does not individually or cumulatively adversely affect general navigation and/or the aquatic environment.
3. Proposed structures crossing wetland vegetation and do not attach to a point in uplands landward of mean high water or ordinary water (including all channelward wetlands) may be authorized under this SPGP if:
 - a. The prospective permittee provides written justification/need for this type of design; and
 - b. The Corps determines that the proposed activity does not individually or cumulatively adversely affect general navigation and/or the aquatic environment.
4. For the construction or expansion of community, commercial, and/or government piers and structures:
 - a. This SPGP covers all open-pile piers, docks, and wharfs associated with the construction or expansion of any community, commercial, or government facility whose primary use is commercial, governmental, and/or recreational. This includes, but is not limited to, community fishing piers, piers at seafood processing facilities, piers at boat repair facilities, piers at marine terminals, recreational piers located on military installations, piers for military associated operational facilities utilized for training, aggregate handling facilities, and other non-recreational facilities.
 - b. If the original purpose of the structure or facility changes, the permittee must submit a request for a new permit (e.g., a recreational marina to a grain loading facility or coal handling facility).

5. For mooring structures/devices, pilings, and fender piles:
 - a. This SPGP covers all such structures, either isolated or part of large facilities, for private, commercial, community, or government use. This includes, but is not limited to, mooring buoys, mooring balls, mooring piles, mooring dolphins, mooring camels, fender piles, and osprey pilings/platforms at private piers, community piers, seafood processing facilities, boat repair facilities, marine terminals, military installations, and other commercial and/or recreational facilities.
 - b. If the original purpose of the structure or facility changes, the permittee must submit a request for a new permit.
6. For aids to navigation, the placement of aids to navigation and regulatory markers/structures that are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66).
7. This SPGP covers private, public, commercial and/or government mooring structures/devices. The location and maximum radius of swing including the moored vessel's length must be included on the drawings. The activity may also require U.S. Coast Guard approval, and it is up to the prospective permittee to obtain the Coast Guard's approval.
8. If the proposed structure(s) includes floatation units, the units must be made of materials that will not become waterlogged or sink if punctured. Floating sections must be braced so they will not rest on the bottom during periods of low water.
9. The proposed structure(s) must be made of suitable materials and be of practical design so as to reasonably ensure a safe and sound structure.
10. The proposed structure(s) (including any moored vessels) must be located on the property in accordance with the local zoning requirements.
11. In order to minimize impacts to SAV and where practicable, the Corps recommends the pier head is designed outside of any SAV bed and includes a boat lift.

Aquaculture and Mariculture

1. This authorization is limited to the bottom, floating, and suspended culturing and harvesting of native bivalve mollusks, seaweed, or finfish mariculture in the intertidal and subaqueous areas of navigable waters.
2. Activities covered include deployment and maintenance of buoys, rafts, trays, oyster castles and other equipment associated with the activity, and work including temporary wet storage and harvesting.

3. No aquaculture or mariculture activity shall occur in SAV beds or saltmarsh, nor shall such vegetation be damaged or removed unless the district engineer waives this criterion by making a written determination concluding that the project will result in minimal adverse effects.
4. Should an area become colonized by SAV or saltmarsh after an authorized aquaculture activity is installed, the activity shall be allowed to remain. However, no expansion into newly colonized areas is authorized by this SPGP. Information on the location of SAV can be found at: <http://web.vims.edu/bio/sav/maps>
5. An aquaculture or mariculture activity will not meet the terms for this SPGP if it will have more than minimal adverse effects on avian resources such as, but not limited to, shore birds, wading birds, or members of the waterfowl group. This includes nesting, feeding, or resting activities by migratory birds identified at 50 CFR 10.13.
6. An aquaculture or mariculture activity will not qualify for this SPGP if it will have more than minimal adverse effects on existing or naturally occurring beds or population of shellfish, marine worms, or other invertebrates that could be used by man, other mammals, birds, reptiles, or predatory fish. Feeding and harvesting plans should be included in the JPA to evaluate impacts.
7. No aquaculture or mariculture activity or vehicular access to the activity shall occur in such a way as to negatively impact coastal or wetland vegetation.
8. As-built drawings must be submitted with the certificate of compliance for all aquaculture and mariculture projects under categories B and C.

Shoreline Stabilization

Living Shorelines:

1. Living Shorelines: Structures and work in WOTUS and discharges of dredged or fill material into WOTUS for the construction and maintenance of living shorelines to stabilize banks and shores in coastal waters, along shores with small fetch and gentle slopes that are subject to low- to mid-energy waves. A living shoreline has a footprint that is made up mostly of native material. It incorporates vegetation or other living, natural “soft” elements alone or in combination with some type of harder shoreline structure (e.g., oyster or mussel reefs or rock sills) for added protection and stability. Living shorelines should maintain the natural continuity of the land-water interface, and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either tidal or lacustrine fringe wetlands or oyster or mussel reef structures. The following conditions must be met:

- a. Structural materials (e.g., Coir logs, coir mats, stone, or native oyster shell) must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms.
 - b. For living shorelines consisting of tidal or lacustrine fringe wetlands, native plants appropriate for current site conditions, including salinity and elevation, must be used if the site is planted by the permittee.
 - c. Discharges of dredged or fill material into WOTUS, and oyster or mussel reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline.
 - d. If sills or other structures must be constructed to protect fringe wetlands for the living shoreline, those structures must be the minimum size necessary to protect those fringe wetlands.
 - e. The activity must be designed, constructed, and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore.
 - f. The living shoreline must be properly maintained, which may require periodic repair of sills, reefs, or replacing sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline. This SPGP authorizes those maintenance and repair activities, including any minor deviations necessary to address changing environmental conditions.
 - g. Activities cannot result in the net loss of vegetated wetlands.
 - h. The total amount of vegetated wetlands which may be filled, graded, or excavated, in square feet may not exceed the length of the activity along the shoreline in linear feet unless the district engineer waives this criterion by making a written determination concluding that the project will result in minimal adverse effects. All impacts must be offset by new plantings and result in no net loss of areal vegetated wetlands.
2. For the purposes of SPGP, a sill is defined as a low structure constructed near shore and parallel to the shoreline for the purpose of building up an existing beach by trapping and retaining sand in the littoral zone. Because a sill acts like a natural bar, it is most effective when constructed at or near the mean low water line and low enough to allow wave overtopping.
 3. Sills may be constructed of riprap, gabion baskets, or clean broken concrete free of metal and re-bar. Alternative materials may be considered for use during the permit review process. The materials should be of sufficient weight or adequately

anchored to prevent their being dislodged and carried about by wave action. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of sills.

4. This activity authorizes the placement of sandy fill material landward of the sills provided the fill is for erosion control and/or wetland enhancement (and not solely for recreational activities).
5. Sills will be designed with at least one 5-foot window/gap per property and per 100 linear feet of sill unless waived by the district engineer. The prospective permittee should provide written justification as to why these criteria should be waived based on site specific criteria.
6. The sill height should be a maximum of +1 foot above mean high water and should be placed a distance no more than 30 feet from mean low water to the landward side of the sill unless waived by the district engineer. The prospective permittee should provide written justification as to why these criteria should be waived based on site specific criteria.

Breakwaters and associated sandy fill material:

1. This SPGP authorizes breakwaters constructed close to shore for the purpose of erosion protection by reducing wave height and thereby reducing the erosive power of the waves reaching the shoreline. This permit does not include breakwaters constructed farther offshore for the purpose of creating quiet water for the protection of a boat harbor.
2. For the purposes of this SPGP, a breakwater is a structure constructed parallel to and channelward of a shoreline for the purpose of reducing incoming wave energy.
3. A breakwater may be a single structure or a series of structures separated by gaps, but may not be connected to the upland or constructed in conjunction with other land attached structures, unless waived by the district engineer. Otherwise, such structures may require individual Department of the Army review.
4. Breakwaters may be constructed of quarry stone, gabion baskets, or clean broken concrete free of metal and re-bar. Alternative materials may be considered for use during the permit review process. However, as breakwaters are barriers to the forces of waves, they should be massive enough to resist the full power of the maximum expected wave energy.
5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of breakwaters.
6. As the design and location of breakwaters is site specific, it is suggested that VIMS be consulted for advice. <https://www.vims.edu/ccrm/>

7. Authorization under this permit includes floating breakwaters (i.e., wave screens) which diffuse energy from the incoming waves as they pass through the device, thereby reducing wave energy reaching a shoreline or harbor.
8. Floating breakwaters should be adequately anchored to prevent their being dislodged by wave action.
9. This activity authorizes the placement of sandy fill material landward of the breakwaters provided the fill is for erosion control (and not solely for recreational activities). Planting of vegetation to stabilize the nourishment area may be required by the Corps, where appropriate.

Bulkheads, revetments, and associated backfill and/or excavation, including bulkhead repair and/or replacement:

1. This SPGP authorizes the construction of bulkheads, revetments, and associated backfill and/or excavation, if such work is necessary to address and remediate an existing erosion problem.
2. The structure and backfill must be placed as closely to the shoreline or existing structure as practicable. No material may be placed in excess of the minimum necessary for erosion protection.
3. Only clean mineral soil obtained from an approved source may be used as backfill material.
4. Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.
5. This SPGP also covers the repair, rehabilitation, or replacement of any previously authorized, currently serviceable bulkhead, or of any currently serviceable bulkhead authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Currently serviceable is defined as, "useable as is or with some maintenance, but not so degraded as to essentially require reconstruction."
6. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This SPGP also authorizes the replacement of a non-serviceable bulkhead up to two feet channelward of the existing deteriorating bulkhead.
7. This authorization includes no limitation on length, nor does it exclude bulkheads which may result in the filling of wetland vegetation as long as there is an

apparent existing erosion problem. The total amount of vegetated wetlands which may be filled, in square feet, must not exceed the length of the activity along the shoreline in linear feet unless the district engineer waives this criterion by making a written determination concluding that the project will result in minimal adverse effects.

Groins, jetties, spurs and/or baffles and associated sandy fill material:

1. Groins and jetties may be constructed of quarry stone, gabion baskets, or clean broken concrete free of metal and re-bar. As the design and location of groins and jetties are site specific, it is suggested that the VIMS be consulted for advice.
<https://www.vims.edu/ccrm/>
<https://www.vims.edu/research/units/programs/ssp/index.php>
2. Groins are structures constructed perpendicular (or nearly so) to a shoreline and extending seaward from the shoreline for the purpose of accreting sand. Groins may merely stop further erosion of a shoreline or they may actually build a sand beach by trapping sand moving in the near shore zone.
3. Jetties are structures constructed perpendicular to the shoreline with the primary purpose of stabilizing and/or protecting an inlet or harbor.
4. Spurs and baffles are short (fewer than 20 feet) structures constructed perpendicular to groins or jetties for the sole purpose of dampening diffracted wave energy.
5. This activity may authorize the placement of sandy fill material adjacent to the groins provided the fill is for erosion control (and not solely for recreational activities). Planting of vegetation to stabilize the fill area may be required by the Corps, where appropriate.

Dredging Activities

This SPGP authorizes both new and maintenance dredging (channels and basins) for certain navigation-related dredging projects, by either mechanical or hydraulic method, in WOTUS. This SPGP authorizes these activities within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District, subject to the terms and conditions further set out herein:

Maintenance Dredging for Previously Authorized Projects (Including Federal Channel Projects):

1. Prospective permittees must document that a previous Department of the Army permit was issued for the work, or that the area was previously dredged as part of an approved Corps Federal project.

2. For the purposes of this SPGP, maintenance dredging means dredging only within the actual areas and to the actual dredging depths as previously authorized/approved.

New Dredging in Navigable Waters:

1. The dredging authorized by this permit shall not exceed a surface area of 2 acres.
2. The depth of dredging of access channels shall not exceed controlling depths of ingress/egress.
3. Newly dredged channels shall have a bottom width of at least 20 feet unless the Corps determines that a narrower channel would not compromise safe navigation and the 20-foot minimum is waived by the district engineer.
4. No dredging of SAV or coral reefs is authorized.
5. Dredging of cobble habitat, intertidal mudflats, wetlands, or shellfish beds must be avoided unless waived by the district engineer; and if waived, the cumulative impacts to these resources cannot exceed 1/10 acre and must include an ecological restoration plan that will result in no net loss of these resources.

Discharges of Dredged Material into WOTUS:

1. This SPGP authorizes, pursuant to Section 404 of the Clean Water Act, a discharge of dredged material, other than incidental fallback (reference 33 CFR323.2(d)(2)), into non-tidal WOTUS for the following activities:
 - a. Discharge of Dredged Material Due to Dredging Method: Certain types of dredging methods (i.e., mechanical) often result in a discharge (redeposit) of dredged material into the water of the U.S. during operation. This discharge is authorized with this SPGP provided:
 - i. The permittee demonstrates, to the satisfaction of the Corps, that the discharge of dredged material associated with the method of dredging is unavoidable.
 - ii. The permittee demonstrates, to the satisfaction of the Corps, that the discharge of dredged material associated with the method of dredging would be minimized to the maximum extent practicable.
 - iii. The discharge (redeposit) of dredged material into waters would occur only as a result of the dredging method.
 - iv. The discharge (redeposit) of dredged material into waters would only occur within the footprint of the dredging activity.
 - v. The total amount of dredged material would not exceed 5,000 cubic yards.
 - vi. The total surface area of dredging would not exceed two (2) contiguous acres.
 - b. Discharge of Return Water from Disposal Area: The return water from a contained disposal area is administratively defined as a discharge of dredged

material (reference 33 CFR 323.2(d)(1)(ii)), even though the disposal area itself may not be located in WOTUS. The discharge is authorized with this SPGP provided:

- i. The quality of the return water is regulated by the state through the Section 401 certification procedures.

Other Dredging Criteria:

1. The following additional information must be included in the JPA and/or on the drawings in order for the JPA to be considered complete:
 - a. The distance of toe of channel from the channelward edge of mudflats and vegetated wetlands.
 - b. The buffer distance (buffer distance = depth of dredging x 4) between the toe of the channel and the wetlands as determined by using the “4X buffer” guidance developed by VIMS in the Virginia Wetlands Report No. 93-8, entitled “Mid-Atlantic Wetland Compensatory Mitigation Workshop,” pages 7, dated Summer 1993.
 - c. Existing bathymetric depth profile (i.e., depth soundings) referenced to local tidal or geodetic datum.
 - d. Information on the dredged material management (dredge disposal) site including location maps, drawings, and a description of the methods of transporting the material to the dredged material management site.
 - e. Any structures (e.g., piers and boat lifts) required to provide access to the proposed dredging.
 - f. For maintenance dredging projects, a cover letter describing the proposed dredging activity and a copy of any previous Department of the Army permit(s) must be submitted in order to initiate the permit evaluation for the proposed maintenance project.
2. On a case-by-case evaluation, the Corps may determine that a “Tier 1” or additional testing of the sediment to be dredged is required to evaluate the potential for contaminants. If testing is required, a sampling and analysis plan shall be submitted to the Norfolk District for approval. Testing results must be submitted to, and approved by, the Norfolk District prior to dredging. The evaluation of dredged material for inland disposal will follow the guidance in the “Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S. Testing Manual (Inland Testing Manual), dated February, 1998, or the most current version. The manual may be downloaded from the Environmental

Protection Agency website:

<http://water.epa.gov/type/oceb/oceandumping/dredgedmaterial/testing.cfm>

3. In order to protect vegetated wetlands, a buffer distance of four times the depth of dredging, (i.e., "4X Buffer"), must be maintained between the toe of the dredged channel and the channelward edge of the vegetated wetlands unless waived by the district engineer. The buffer distance is to be determined by using the guidance developed by VIMS in the Virginia Wetlands Report No. 93-8, entitled "Mid-Atlantic Wetland Compensatory Mitigation Workshop," pages 7, dated Summer 1993, which explains how to properly obtain the "4X Buffer" distance. This report can be found at the following website:
http://ccrm.vims.edu/publications/publications_topics/vwr/vwr-summer93.pdf
4. Corps authorization of the dredging is to a certain depth at mean low water and/or ordinary high water, referenced to local tidal or geodetic datum, as outlined on drawings provided by the prospective permittee with the preconstruction notification. The Corps-approved permitted depth includes any advance maintenance, allowable over depth, and/or margin of error. Exceeding this depth will be considered a violation of the terms and conditions of this permit. The Permittee is responsible for compliance with the terms and conditions of this SPGP, regardless of who performs the work. The Permittee shall ensure contractors and/or workers have knowledge of the terms and conditions of this SPGP. The Permittee must apply for and be granted a new permit verification to dredge deeper. If the requested modifications exceed the terms and conditions of this SPGP, then an Individual Department of the Army permit will be required.
5. Periodic maintenance dredging may be performed until expiration of SPGP authorization. Each maintenance dredging event is limited to the removal of material at a depth no deeper than the current authorized dredge depth. Following the initial dredging event, the permittee must contact the Corps, in writing, a minimum of two weeks in advance of each subsequent maintenance dredging activity. Maintenance dredging must use the same dredged material disposal site as authorized under this current SPGP authorization; if a new disposal site is necessary, a written permit verification is required from the Corps prior to maintenance dredging.
6. All piers, associated structures (e.g., boatlifts and mooring piles), and vessels, whether existing or proposed under a different permit, will be located outside the channel.
7. Any authorized dredging located adjacent to certain resources (including shellfish beds, SAV, and anadromous fish use areas) will require a time of year restriction (TOYR) unless determined unnecessary through additional agency coordination. The TOYR indicates the time of any given year that the authorized dredging cannot be performed in order to protect these resources. The TOYR for these resources are as follows:

- Shellfish beds: March 1 through September 30
 - SAV: March 1 through October 31
 - Anadromous Fish Use Areas: February 15 through June 30
8. All dredged material must be disposed of in an approved dredged material disposal site, in an approved upland disposal site, or at the Craney Island Dredged Material Management Area (CIDMMA) or Rehandling Basin (CIRB). The disposal of dredged material into WOTUS is not authorized by this permit, except at approved dredged material disposal sites. Currently approved dredged material management sites do not include ocean disposal sites; use of ocean disposal must be permitted under separate authorization. The use of CIDMMA/CIRB will require a separate Section 408 review, please see the Section 408 webpage for more information at: <https://www.nao.usace.army.mil/408Review/>
 9. If an upland disposal site is to be utilized, the site must be properly designed to contain the material and have proper erosion and sedimentation controls to prevent overtopping and re-entry into the waterway. In addition, the prospective permittee must adequately address the need for liner or impermeable material to prevent leaching of any identified contaminants into ground water.
 10. Within 30 days of completion of the dredging, an after-dredge hydrographic survey, prepared by a state-certified engineer or surveyor, must be provided to the Corps. The hydrographic survey should reference a local tidal or geodetic datum.
 11. Barges and scows used to transport dredged material may be filled only to a point where no overflow occurs. No overflow pipes are allowed.

Other Activities

Boat ramps and accessory structures, including any fill or excavation for installation:

1. This activity covers all boat ramps (e.g., concrete with accessory structures), whether private, public, commercial, or government-owned.
2. The pouring of concrete for the construction of boat ramps must be accomplished within a cofferdam unless the activity can be performed completely in the dry, such as during lake drawdown periods. The introduction of uncured concrete into surface waters is prohibited.
3. The SPGP authorizes excavation and/or filling within the limits of the boat ramp only (e.g., for bedding). Dredging or filling for water access to the ramp may require separate Department of the Army authorization. Authorization of the boat ramp does

not imply that a future dredging proposal to provide access to the structure would be approved.

4. This SPGP also authorizes accessory structures including catwalks, pilings, and small piers whose sole purpose is to make it easier to get boats into or out of the water.
5. All boat ramps and accessory structures shall be located so as to eliminate or minimize impacts to special aquatic sites, including SAV, shellfish beds, oyster reefs and vegetated wetlands.

Other Signs:

1. This SPGP covers informative signs, such as but not limited to, no trespassing, Unexploded Ordnance warnings, or informative guides.

VI. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under this SPGP. Work that does not meet one or more of the terms or general conditions of this SPGP, including work that has been determined to be more than minimal in nature (at any impact level), will require consideration under a different type of Corps permit.

1. Other permits: Authorization does not obviate the need to obtain other federal, state, or local authorizations required by law or to comply with all federal, state, or local laws.
2. Minimal effects: Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts.
3. Discretionary authority: The Corps District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.
4. All activities located within Virginia's designated coastal management area (Tidewater) requiring a listed federal permit, license, or approval must be consistent with Virginia's Coastal Zone Management Program. All projects authorized under Category A and B are consistent with Virginia's Coastal Zone Management Program. To ensure that the proposed 23-SPGP-PASDO is fully consistent with the enforceable policies of the management program, applicants who receive authorization under Category C of 23-SPGP-PASDO will be required to certify that federally licensed or permitted activities affecting Virginia's coastal uses or resources will be conducted in a manner consistent with Virginia's CZM Program, and obtain concurrence from the DEQ, Office of Environmental Impact Review (OEIR). It is the applicant's responsibility to submit a consistency

certification to the OEIR for concurrence or objection, and proof of concurrence must be submitted to the Corps prior to final permit authorization.

5. Single and complete non-linear projects: The activity must be a single and complete project. For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits of a 23-SPGP-PASDO authorization.
6. Single and complete linear projects: The activity must be a single and complete project. A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of 23-SPGP-PASDO authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.
7. Independent utility: A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.
8. Multiple general permit authorizations: The 23-SPGP-PASDO may be combined with other Corps general permits (including Nationwide, Regional, or other programmatic general permits) if the impacts are considered cumulatively and do not exceed the acreage limit or linear footage limits of the 23-SPGP-PASDO.
9. Permit on-site: The permittee shall ensure that a copy of 23-SPGP-PASDO and the accompanying authorization letter are always at the work site. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any 23-SPGP-PASDO verification.
10. Historic properties:

- a. No activity is authorized under the 23-SPGP-PASDO which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
- b. Federal permittees: should follow their own procedures for complying with the requirements of section 106 of the NHPA (see 33 CFR 330.4(g)(1)). The federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.
- c. Non-federal permittees: must state which historic properties might have the potential to be affected by the proposed 23-SPGP-PASDO activity, or include a vicinity map indicating the location of the historic properties, or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), or designated tribal representative, as appropriate, and the NHPA (see 33 CFR 330.4(g)). When reviewing permit applications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the NHPA. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the permit application and these identification efforts, the district engineer shall determine whether the proposed SPGP-PASDO activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.
- d. Where the non-federal applicant has identified historic properties on which the proposed 23-SPGP-PASDO activity might have the potential to cause effects and has so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. If NHPA section 106 consultation is required, the district engineer will notify the non-

federal applicant that he or she cannot begin the activity until section 106 consultation is completed.

- e. Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.
- f. Discovery of previously unknown remains and artifacts. Permittees who discover any previously unknown historic, cultural, or archeological remains and artifacts while accomplishing the activity authorized by 23-SPGP-PASDO, must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery.

Non-federal permittees shall not begin work on the activity until Section 106 review and/or consultation has been completed AND they have received their 23-SPGP-PASDO verification.

- 11. Tribal rights: No activity or its operation may impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
- 12. Federal lands: Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the United States Fish and Wildlife Service (USFWS), U.S. Forest Service, or National Park Service unless approval from the applicable land management agency is provided with the permit application.
- 13. Endangered species: No activity is authorized under any 23-SPGP-PASDO which is likely to directly or indirectly jeopardize the continued existence of a

threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA) or Virginia's Endangered Species Act, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any 23-SPGP-PASDO which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the 23-SPGP-PASDO activity, or whether additional ESA consultation is necessary.

Incidents where any individuals of sea turtles, Atlantic sturgeon, or any species listed by National Oceanic and Atmospheric Administration (NOAA) Fisheries under the ESA appear to be injured or killed as a result of discharges of dredged or fill material into WOTUS or structures or work in navigable WOTUS authorized by this SPGP shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401, the Regulatory Office of the Norfolk District of the U.S. Army Corps of Engineers at (757) 201-7652 and the Virginia Aquarium Marine Science Center's Stranding Response Program (VAQSRP) at (757) 385-7575. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, or VAQSRP, to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

Authorization of an activity by a 23-SPGP-PASDO does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit or a Biological Opinion with "incidental take" provisions) from the USFWS or the National Marine Fisheries Service (NMFS). The ESA prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their World Wide Web pages at

<https://ipac.ecosphere.fws.gov/location/index> and <http://www.noaa.gov/fisheries.html> respectively.

Non-federal permittees shall not begin work on the activity until Section 7 review and/or consultation has been completed AND they have received their 23-SPGP-PASDO verification.

14. Migratory birds and bald and golden eagles: 23-SPGP-PASDO complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the USFWS to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
15. Wild and scenic rivers: Currently, there are no designated Wild and Scenic Rivers in Virginia. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status, unless the appropriate federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate federal land management agency in the area (e.g., National Park Service (NPS), U.S. Forest Service (USFS), Bureau of Land Management (BLM), and USFWS). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.
16. Navigation:
 - a. No activity may cause more than a minimal adverse effect on navigation.
 - b. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable WOTUS.
 - c. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

17. Floodplains: The activity must comply with applicable Federal Emergency Management Agency (FEMA) -approved state or local floodplain management requirements.
18. 408 certifications: Pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. 408 (Section 408), no activity may temporarily or permanently alter or make use of a U.S. Army Corps of Engineers (Corps) Civil Works project unless reviewed and granted permission by the Secretary of the Army, as delegated. The Corps may grant this permission if the work does not impair the usefulness of the project and is not injurious to the public interest. No activity located within or adjacent to a Corps Civil Works project is authorized under a 23-SPGP-PASDO until written Section 408 permission has been granted or a written waiver has been provided by the applicable District's Section 408 Coordinator within the Norfolk District Regulatory Area of Responsibility (AOR) including: Norfolk District, Baltimore District, Huntington District, Nashville District, and/or Wilmington District.
19. Environmental justice: Activities authorized under 23-SPGP-PASDO must comply with Executive Orders 12898, 14008, and 14096.
20. Federal liability: In issuing 23-SPGP-PASDO, the Federal government does not assume any liability for the following:
- a. damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by 23-SPGP-PASDO.
 - d. design or construction deficiencies associated with the permitted work.
 - e. damage claims associated with any future modification, suspension, or revocation of this permit.
21. Avoidance and minimization: Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. (40 CFR 230.10(a)-(d) Section 404 (b)(I) Guidelines).
22. Compensatory mitigation: Mitigation will generally be required for all projects where permanent loss exceeds 0.10 acre of wetlands, and/or 0.03 acre of stream bed, or 300 linear feet of stream bed. Stream channel loss must be reported in acres and linear feet.

a. WETLANDS and OPEN WATERS:

- i. All wetland mitigation will comply with the Mitigation Rule [Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources, dated April 10, 2008, 33 CFR 325 and 332/40 CFR 230].
- ii. Wetland mitigation: will generally be required for all projects where the total permanent impacts exceed 1/10 acre.
- iii. Generally, the minimum required wetland mitigation ratios will be as follows:
 - 2.1 for forested wetlands
 - 1.5:1 for scrub/shrub wetlands
 - 1:1 for emergent wetlands
 - 0.5:1 for permanent loss of palustrine open waters
 - 1:1 for conversion of forested wetlands or scrub-shrub wetlands to emergent wetlands when certain functions and services of WOTUS are permanently adversely affected by a regulated activity. (e.g., when a discharge of dredge or fill material into WOTUS will convert a forested or scrub-shrub wetland to an herbaceous wetland in a permanently maintained utility line right-of-way)
- iv. On a case-by-case basis, additional compensatory mitigation may be required to ensure impacts are minimal:
 - For permanent or temporary conversion of one wetland type to another
 - For wetland impacts totaling less than 1/10 acre
 - At mitigation ratios beyond the generally recommended ratios

b. STREAMS: mitigation will generally be required for all projects where the permanent loss exceeds 0.03 acre or 300 linear feet of stream bed.

Stream channel loss must be reported in acres and linear feet.

- i. All stream mitigation will comply with the Mitigation Rule [Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources, dated April 10, 2008, 33 CFR 325 and 332/40 CFR 230].
- ii. Minimum stream mitigation requirements will be determined using the current Corps and VDEQ endorsed assessment methodology.
- iii. On a case-by-case basis, additional compensatory mitigation may be required to ensure impacts are minimal:
 - For stream mitigation requirements that exceed the assessment methodology recommendation.
 - For mitigation for impacts totaling less than 0.03 acre or 300 linear feet of stream bed may be required on a case-by-case basis to ensure impacts are minimal.

23. Heavy equipment: Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

23. Temporary fills: The soils of any temporarily impacted areas located in wetlands that are cleared, grubbed, and/or filled, must be restored once these areas are no longer needed for their authorized purpose, no later than completion of project construction, and not to exceed 12 months after commencing the temporary impacts. To restore, temporary fill must be removed in its entirety and the affected areas returned to preconstruction elevations, the soil surface loosened by ripping or chisel plowing to a depth of 8-12", and then seeded using native wetland species.

Fill or dredged material in WOTUS that is not removed within the 12-month period will be considered a permanent impact, unless otherwise determined by the Corps. This additional impact to WOTUS may result in the Corps initiating a permit non-compliance action, which may include a restoration order, after-the-fact permitting, and/or compensatory mitigation.

24. Sedimentation and erosion control: Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, and any work below the ordinary high-water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within WOTUS during periods of low-flow or no-flow.

25. Countersinking of pipes and culverts: Based on consultation with Virginia Department of Wildlife Resources (VDWR), the Corps has determined that fish and other aquatic organisms are most likely present in any nontidal stream being crossed, in the absence of site-specific evidence to the contrary. The following conditions will apply in nontidal waters:

a. All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the Corps on a case-by-case basis (see below). Pipes that are 24" or less in diameter shall be countersunk 3" below the natural stream bottom. Pipes that are greater than 24" in diameter shall be countersunk 6" below the natural stream bottom. The countersinking requirement does not apply to bottomless pipes/culverts or pipe arches. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both the inlet and outlet of the structure. In sets of multiple pipes or culverts (with bottoms) at least one pipe or culvert shall be depressed (countersunk) at both the inlet and outlet to convey low flows.

b. When countersinking culverts, permittees must ensure reestablishment of a surface water channel (within 15 days post construction) that allows for the movement of aquatic organisms and maintains the same hydrologic regime that was present preconstruction (i.e., the depth of surface water through the permit area should match the upstream and downstream depths). This may require the addition of finer materials to choke the larger stone and/or placement of riprap to allow for a low flow channel.

c. The requirement to countersink does not apply to extensions of existing pipes or culverts that are not countersunk, or to maintenance of pipes/culverts that do not involve replacing the pipe/culvert (e.g., repairing cracks or adding material to prevent/correct scour).

d. Floodplain pipes: The requirement to countersink does not apply to pipes or culverts that are being placed above ordinary high water, such as those placed to allow for floodplain flows. The placement of pipes above ordinary high water is not jurisdictional (provided no fill is discharged into wetlands).

e. Hydraulic opening: Pipes should be adequately sized to allow for the passage of ordinary high water with the countersinking and invert restrictions taken into account.

f. Pipes on bedrock or above existing utility lines: Different procedures will be followed for pipes or culverts to be placed on bedrock or above existing buried utility lines where it is not practicable to relocate the lines, depending on whether the work is for replacement of an existing pipe/culvert or a new pipe/culvert:

i. Replacement of an existing pipe/culvert: Countersinking is not required provided the elevations of the inlet and outlet ends of the replacement pipe/culvert are no higher above the stream bottom than those of the existing pipe/culvert. Documentation (photographic or other evidence) must be maintained in the permittee's records showing the bedrock condition and the existing inlet and outlet elevations.

ii. A pipe/culvert is being placed in a new location: If the permittee determines that bedrock or an existing buried utility line that is not practicable to relocate prevents countersinking, he/she should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge), or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If the permittee determines that neither a bottomless structure nor an alternative location is practicable, justification must be provided in the 23-SPGP-PASDO application. The permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs downstream, or other measures to provide for the movement of aquatic organisms. The permit application must also include photographs documenting site conditions. NOTE: Blasting of stream bottoms through

the use of explosives is not acceptable as a means of providing for countersinking of pipes on bedrock.

g. Pipes on steep terrain: Pipes being placed on steep terrain (slope of 5% or greater) must be countersunk in accordance with the conditions above and will in most cases be non-reporting. It is recommended that on slopes greater than 5%, a larger pipe than required be installed to allow for the passage of ordinary high water in order to increase the likelihood that natural velocities can be maintained. There may be situations where countersinking both the inlet and outlet may result in a slope in the pipe that results in flow velocities that cause excessive scour at the outlet and/or prohibit some fish movement. This type of situation could occur on the side of a mountain where falls and drop pools occur along a stream. Should this be the case, or should the permittee not want to countersink the pipe/culvert for other reasons, justification must be provided in the 23-SPGP-PASDO application. The permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life and documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. The permittee should design the pipe to be placed at a slope as steep as stream characteristics allow, countersink the inlet 3-6", and implement measures to minimize any disruption of fish movement. These measures can include constructing a stone step/pool structure, preferably using river rock/native stone rather than riprap, constructing low rock weirs to create a pool or pools, or other structures to allow for fish movements in both directions. Stone structures should be designed with sufficient-sized stone to prevent erosion or washout and should include keying-in as appropriate. These structures should be designed both to allow for fish passage and to minimize scour at the outlet. The quantities of fill discharged below ordinary high water necessary to comply with these requirements (i.e., the cubic yards of stone, riprap or other fill placed below the plane of ordinary high water) must be included in project totals.

h. Problems encountered during construction: When a pipe/culvert is being replaced, and the design calls for countersinking at both ends of the pipe/culvert, and during construction it is found that the streambed/banks are on bedrock, a utility line, or other documentable obstacle, then the permittee must stop work and contact the Corps (contact by telephone and/or email is acceptable). The permittee must provide the Corps with specific information concerning site conditions and limitations. The Corps will work with the permittee to determine an acceptable plan, taking into consideration the information provided by the permittee, but the permittee should recognize that the Corps could determine that the work will not qualify for a 23-SPGP-PASDO permit.

i. Emergency pipe replacements: In the case of an emergency situation, such as when a pipe/culvert washes out during a flood, a permittee is encouraged to countersink the replacement pipe at the time of replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for

countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to replace and countersink the pipe/culvert and at a later time in accordance with the guidance above. In other words, the replacement of the washed-out pipe is viewed as a temporary repair, and a countersunk replacement should be made at the earliest possible date. The Corps must be notified of all pipes/culverts that are replaced without countersinking at the time that it occurs, even if it is an otherwise non-reporting activity, and must provide the permittee's planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by email). The permittee should anticipate whether bedrock or steep terrain will limit countersinking, and if so, should follow the procedures outlined in (f) and/or (g) above.

26. Discharge of pollutants: All authorized activities involving any discharge of pollutants into WOTUS shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 et seq.) and applicable state and local laws.
27. Suitable material: No activity may use unsuitable material (e.g., trash, debris, car bodies, or asphalt). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
28. Obstruction of high flows: Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
29. Aquatic life movements: No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
30. Spawning areas: Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
31. Migratory bird breeding areas: Activities in WOTUS that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
32. Native trout: Designated Trout Waters, are defined by the Virginia State Water Control Board and the VDWR. The waters, occurring specifically within the mountains of Virginia, are within the following river basins:

Potomac-Shenandoah River Basins
James River Basin
Roanoke River Basin
New River Basin
Tennessee and Big Sandy River Basins
Rappahannock River Basin

Information on designated trout streams can be obtained via VDWR's Virginia Fish and Wildlife Information Service's (VAFWIS's) Cold Water Stream Survey database. Basic access to the VAFWIS is available via <https://services.dwr.virginia.gov/fwis/index.asp>.

VDWR recommends the following time-of-year restrictions (TOYRs) for any in-stream work within streams identified as wild trout waters in its Cold Water Stream Survey database. The recommended TOYRs for trout species are:

Brook Trout: October 1 through March 31
Brown Trout: October 1 through March 31
Rainbow Trout: March 15 through May 15

This condition applies to the following counties and cities: Albemarle, Allegheny, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Bristol, Buchanan, Buena Vista, Carroll, Clarke, Covington, Craig, Dickenson, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Henry, Highland, Lee, Loudoun, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Rappahannock, Roanoke City, Roanoke Co., Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Staunton, Tazewell, Warren, Washington, Waynesboro, Wise, and Wythe.

33. Anadromous fish use areas: Authorizations associated with the 23-SPGP-PASDO shall not adversely affect spawning habitat or a migratory pathway for anadromous fish. Areas of anadromous fish use are indicated on the VDWR information system at: <https://services.dwr.virginia.gov/fwis/index.asp>.

If a project is located within an area documented as an anadromous fish use area (confirmed or potential), all in-stream work is prohibited from occurring between February 15 through June 30 of any given year or other time of year restriction (TOYR) specified by the VDWR and/or VMRC.

Should the Corps determine that the work is minimal and no TOYR is needed, the Corps will initiate consultation with National Oceanic Atmospheric Administration (NOAA) Fisheries Service for their concurrence.

34. All 23-SPGP-PASDO permitted aquaculture or mariculture activities shall include the immediate removal of all inactive or derelict nets, cages and other in-water

gear associated with the fishery to minimize impacts to fish and wildlife and to avoid the gear turning into in-water or washed-up debris.

35. Water supply intakes: No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization. Any damaged/replaced surface water intakes should, upon repair, be brought up to current standards to minimize impingement/entrainment of aquatic species, as specified in the Surface Water Withdrawal Intake Design and Operation Standards found here: <https://dwr.virginia.gov/wp-content/uploads/media/Surface-Water-Intake-Design-Operation-Standards.pdf>
36. Invasive species: Plant species listed in the most current Virginia Department of Conservation and Recreation's (DCR) Invasive Alien Plant List shall not be used for revegetation for activities authorized by the 23-SPGP-PASDO. The list of invasive plants in Virginia is found at: <https://www.dcr.virginia.gov/natural-heritage/invspdpdlist>. DCR recommends the use of regional native species for revegetation as identified in the DCR Native Plants for Conservation, Restoration and Landscaping brochures for the coastal, piedmont and mountain regions <http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure> also see the DCR native plant finder: <https://www.dcr.virginia.gov/natural-heritage/native-plants-finder>.
37. Inspections: The permittee understands and agrees that the Corps is permitted and allowed to make periodic inspections at any time the Corps deems necessary to ensure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Corps reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under 23-SPGP-PASDO, as deemed necessary on a case-by-case basis.
38. Maintenance: Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable 23-SPGP-PASDO general conditions.
39. Property rights: 23-SPGP-PASDO does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of federal, state, or local laws or regulations. If real estate rights are needed from the Corps, the permittee must contact the Norfolk District Corps Real Estate Office at (757) 201-7739 or at the address listed on the front page of this permit. Federal property can be located on the "NAO Real Estate Data – CWLDM Land Parcel Area" layer on the Norfolk District Section 408 Map located on the Norfolk District Section 408 webpage at: <https://www.nao.usace.army.mil/408Review/>.

40. Suspension and revocation: 23-SPGP-PASDO and individual verifications under 23-SPGP-PASDO may be either suspended or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.
41. Restoration directive: The permittee, upon receipt of a restoration directive, shall restore the WOTUS to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the WOTUS to their former conditions, by contract or otherwise, and recover the cost from the permittee.
42. Special conditions: The Corps may impose other special conditions on a project verified pursuant to 23-SPGP-PASDO that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all conditions of the authorization/verification, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
43. False or incomplete information: In granting authorization pursuant to this permit, the Corps has relied upon information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be false or incomplete, the Corps may suspend or revoke authorization, in whole or in part, and/or the United States or Corps may institute appropriate legal proceedings.
44. Abandonment: If the permittee decides to abandon the activity authorized under 23-SPGP-PASDO, unless such abandonment is merely the transfer of property to a third party, they may be required to restore the area to the satisfaction of the Corps.
45. Transfer of verification: To transfer verification under 23-SPGP-PASDO, the transferee and permittee must supply the Corps with a written and signed, by all appropriate parties, request to make such a transfer. Such transfer is not effective until written approval has been granted by the Corps.
46. Binding effect. The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.
46. Expiration of 23-SPGP-PASDO: Unless further suspended or revoked, the 23-SPGP-PASDO will be in effect until September 4th, 2028.
- a. Activities which have commenced (i.e., are under construction) or are under contract to commence construction in reliance upon 23-SPGP-PASDO will remain authorized provided the activity is completed within 12

months of the date of this 23-SPGP-PASDO's expiration of September 4th, 2028, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). Activities qualifying for this extension that are not complete by September 4th, 2028, must apply for new general and/or individual Corps permit authorization.

- b. Activities which have NOT commenced and are NOT under contract to commence construction by the September 4th, 2028, expiration must apply for a new general and/or individual Corps permit authorization.



Brian P. Hallberg, PMP
Colonel, U.S. Army
Commanding